

No. 12020

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

GEORGE T. GOGGIN, as Trustee of the Estate of
A. Moody & Co., Inc., Bankrupt,

Appellant,

vs.

H. L. BYRAM, Tax Collector for the County of Los
Angeles, State of California,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeal From the District Court of the United States
for the Southern District of California
Central Division

FILED

SEP 27 1948

PAUL P. O'BRIEN,
O'Brien

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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*Page number appearing at foot of Certified Transcript.

George T. Goggin, etc.

In the District Court of the United States for the
Southern District of California
Central Division

In Bankruptcy No. 44737-WM

In the Matter of A. MOODY & CO., INC., a California
corporation,

Debtor.

PETITION UNDER CHAPTER XI
(Section 322)
OF THE BANKRUPTCY ACT

To the Honorable Judges of the Above-Entitled Court:

The verified petition of A. Moody & Co., Inc., a corporation, respectfully represents to the Court as follows:

I.

That your petitioner is now and at all times herein mentioned has been a corporation duly and regularly organized and existing under the laws of the State of California, having its principal place of business at 5300 South San Pedro Street, Los Angeles, in the County of Los Angeles, State of California, being engaged in the manufacture of mattresses and box springs, and is entitled to become a bankrupt under the Acts of Congress relating to bankruptcy, and is not a municipal, railroad, insurance or banking corporation or a building or loan association.

II.

That your petitioner has had its principal place of business and office at 5300 South San Pedro Street, in the City of Los Angeles, [2] County of Los Angeles, State of California, within the above judicial district for

a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

III.

That no bankruptcy proceeding has heretofore been filed by your petitioner and no involuntary petition in bankruptcy is now pending against it.

IV.

That your petitioner is unable to pay its debts as they mature and proposes the arrangement with its unsecured creditors as hereinafter set forth.

V.

That your petitioner alleges, as required by Section 324, Chapter XI of the Bankruptcy Act, as amended:

- (a) That your petitioner has no executory contracts except a lease with an option to purchase, covering the building and real property described in the schedules attached hereto.
- (b) That a statement of affairs of your petitioner will be filed within the time directed by the above-entitled Court.
- (c) That the Clerk's filing fee will be paid upon the filing of this petition.
- (d) That your petitioner's assets are located at 5300 South San Pedro Street, in the City of Los Angeles, County of Los Angeles, State of California.

VI.

That your petitioner was incorporated during the month of March, 1946, and took over the manufacturing business of A. Moody & Co., a co-partnership, which co-

partnership had been engaged in the business of manufacturing and selling mattresses for a period of some twenty-nine years. That since the incorporation of debtor herein, your [3] petitioner has been the largest manufacturer of mattresses on the Pacific Coast, and during the first ten months of your petitioner's operations, had sales in excess of One Million Four Hundred Thousand Dollars (\$1,400,000.00). That your petitioner's business has been operating at a profit and can be operated at a profit, but due to a program of expansion and the purchasing of large inventories, has depleted its working capital and is unable to meet its obligations as they mature.

That your petitioner leased premises at 5300 South San Pedro Street, Los Angeles, California, from the Lesco Corporation, and proceeded to consolidate its operations and installed machinery and equipment and fixtures, which resulted in a cash outlay and the incurring of obligations in the amount of One Hundred Seventy-five Thousand Dollars (\$175,000.00).

That your petitioner has a large supply of glass wool warehoused with the Haslett Warehousing Company, the warehouse receipts being pledged with the Bank of America National Trust & Savings Association to secure an obligation in the amount of One Hundred Thirty-one Thousand Nine Hundred Eighty-three and 76/100 Dollars (\$131,983.76). That your petitioner has been withdrawing merchandise as required and paying the sum of Two and 25/100 Dollars (\$2.25) per pound for the glass wool so withdrawn. Said glass wool was purchased by your petitioner for the sum of Three and 40/100 Dollars (\$3.40) per pound.

That your petitioner has been discounting its accounts receivable with the Standard Factors Corporation. Under

said arrangement, a twenty per cent (20%) hold-back is held as reserve against accounts so factored.

VII.

That your petitioner estimates that its operating expense for the next thirty days will consist of: [4]

Payroll	\$ 18,000.00
Utilities	1,000.00
Transportation expense	1,000.00
Materials and supplies.....	94,000.00
<hr/>	
Total	\$114,000.00

That the sale will be made of One Hundred Fifty Thousand Dollars (\$150,000.00) and that the invoices evidencing said sales can be discounted with the Standard Factors Corporation so as to realize One Hundred Twenty Thousand Dollars (\$120,000.00) cash to defray said operating expenses.

VIII.

The stock of the corporation is owned and subscribed for by Joe Moody, who is the president and general manager, and has been entitled to receive the sum of Two Hundred Dollars (\$200.00) per week as his compensation; that C. W. Jacobson, who is the comptroller and assistant to Mr. Moody, has been and will receive One Hundred Dollars (\$100.00) per week; that sales are handled by M. Malcolm Jones, who is paid the sum of One Hundred Dollars (\$100.00) per week; and that Robert Moody, a cousin of Joe Moody, is production manager and receives One Hundred Dollars (\$100.00) per week. That your petitioner proposes to pay said salaries until the further order of the above entitled court.

IX.

That your petitioner has heretofore, in connection with Joe Moody, invested money in connection with the development of a saw mill in the San Jacinto Mountains for the purpose of obtaining lumber for its box springs construction and shipping requirements. That a total of Twenty-nine Thousand One Hundred Thirty-two and 87/100 Dollars (\$29,132.87) has been invested in said project.

X.

That your petitioner has heretofore entered into escrows for the [5] sale of certain parcels of real property in order to provide additional working capital, and that said escrows are in a condition where it is hoped the same may be closed at an early date. That your petitioner will realize from properties sold in connection with said escrows, an estimated net amount of \$7,000.00.

XI.

That attached hereto and made a part hereof, are schedules of assets and liabilities required by the general orders in Bankruptcy, which schedules contain a list of all creditors now known to your petitioner, with their addresses and the amounts of their obligations.

DEBTOR'S PROPOSED PLAN OF ARRANGEMENT

That your petitioner proposes the following plan of arrangement:

Article 1: That the creditors of petitioner be divided into classes and that the proposed classes be as follows:

Class A. Expenses of operation under plan of arrangement as may be allowed and ordered paid.

Class B. Expenses of administration that may be allowed and ordered paid.

Class C. All creditors entitled to priority as provided in Section 64a, subdivisions 2, 4 and 5 of the Acts of Congress relating to Bankruptcy, as amended.

Class D. Obligations as they mature to secured creditors in accordance with the terms of their contracts.

Class E. To pay pro-rata, at such times as this Honorable Court may direct and at intervals not to exceed six months, dividends upon unsecured creditors' claims until said claims are paid in full.

Article II. That said plan of arrangement be carried out by permitting the debtor to remain in possession of its assets with the right to carry on its manufacturing business in the ordinary course under the supervision of a representative of the above entitled court [6] or a creditors' committee, as may be desired by creditors and deemed advisable by the above-entitled Court.

Article III. That petitioner be permitted to make payments from time to time when funds are available in accordance with this plan of arrangement and that petitioner be given an extension of time within which to complete this arrangement and to discharge all of the creditors' claims as provided in this arrangement.

Article IV. That petitioner be permitted to remain in possession of its assets and continue its manufacture and sale of mattresses and box springs, the purchase of materials, the employment of workmen and to conduct and operate its business under the supervision and direction of this Honorable Court with authority to employ agents,

managers, assistants and the necessary labor as may be required to carry out the debtor's plan of arrangement, including the right to borrow money and incur obligations as may be authorized and permitted from time to time by the above-entitled Court, and to secure said obligations if required so to do, as may be ordered and directed by the above-entitled Court.

Article V. All debts incurred after the filing of this petition prior to the confirmation of the plan of arrangement shall be paid in full and in such manner as ordered by the above-entitled Court.

Article VI. The Court shall retain jurisdiction of the debtor's property and the operation of same until the payment in full of all creditors' claims and this Honorable Court be authorized, in its discretion, to countersign all checks signed by the debtor in possession.

Article VII. In the event any claim is in controversy in respect to classification or the amount due, the debtor, under order of Court, may make such deposit in such manner as the Court may direct in respect to said disputed claim and proceed to pay other [7] creditors and be restored to possession pending a final determination of said disputed claim.

XI.

That your petitioner is advised that Chapter XI of the Bankruptcy Act is the appropriate section of the Act under which to seek relief and that your petitioner verily believes that if its business can be operated in the manner herein designated and if permitted to continue to operate

as proposed in this petition, your petitioner can pay all its just debts in full.

That it is necessary for the speedy and proper administration of the debtor's affairs and the equitable payment of creditors, that all creditors and parties be enjoined from commencing or prosecuting any suit or foreclosure proceeding in any form or manner other than before the above-entitled Court or without permission of the above-entitled Court.

Wherefore, your petitioner prays that proceedings may be had upon this petition in accordance with the provisions of Chapter XI of the Bankruptcy Act as amended. That all creditors and other parties be enjoined from commencing any suit in any Court or conducting any sale or foreclosure proceedings affecting the property of the petitioner or repossessing any property without order of this Honorable Court first had and obtained. That debtor be permitted to pay current labor, operating expenses. That this Honorable Court leave the debtor in possession, with full authority to operate and carry on the debtor's business affairs pending a confirmation of the debtor's proposed plan of arrangement and that an adjudication be stayed. That this Honorable Court require debtor to open the necessary bank account or accounts for the purpose of properly conducting the business and that the funds may be withdrawn upon the signature and countersignature as this Honorable Court may direct and to take [8] such other steps and make such other orders herein as may be necessary for the protection of the debtor and all interest-

ed parties and that your petitioner be granted such other and further relief as is just and proper in the premises.

A. MOODY & CO., INC.,

(Seal)

a California Corporation

By Joe Moody, President

MURCHISON, MYERS & GRAY and
COBB & UTLEY

By Francis B. Cobb

Attorneys for Debtor [9]

[Verified.] [10]

CERTIFIED COPY OF RESOLUTION

ADOPTED BY THE BOARD OF DIRECTORS OF

A. MOODY & CO. INC.

A California Corporation

Resolved that the president and/or secretary of this corporation be and each of them hereby is authorized to file in the District Court of the United States, for the Southern District of California, Central Division, a petition for an arrangement or other appropriate petition under the applicable laws of the United States for and on behalf of the Corporation.

Be It Further Resolved that the firm of Murchison Myers & Gray and the firm of Cobb & Utley be and they hereby are employed by the corporation as its attorneys to file said petition and prosecute such proceedings with relation thereto as in their judgment may be fit and necessary in the premises.

The foregoing resolution was put to a vote and unanimously adopted.

I hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the board of directors of said corporation at a duly and regularly called and held meeting of said directors held on the 25th day of January, 1947, at which all of the directors of said corporation were present and voted; that said resolution appears on the minutes of said meeting and that it has never been revoked or modified.

I also certify that the foregoing resolution was fully approved by Joe Moody, Bruce Murchison, H. Morton Newman and H. Morton Newman, Jr., being all of the directors of said corporation.

In Witness Whereof, I have hereunto set my hand and the seal of the corporation, this 25th day of January, 1947.

(Seal)

BRUCE MURCHISON

Secretary of A. Moody & Co., Inc., a California
Corporation

[Endorsed]: Filed Jan. 27, 1947. Edmund L. Smith.
Clerk. [11]

[Title of District Court and Cause]

APPROVAL OF DEBTOR'S PETITION AND ORDER OF REFERENCE UNDER SECTION 322 OF THE BANKRUPTCY ACT

At Los Angeles, in said District, on Jan. 27, 1947 before the said Court the petition of A. Moody & Co., Inc., a corporation, that he desires to obtain relief under Section 322 of the Bankruptcy Act, and within the true intent and meaning of all the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said petition is hereby approved accordingly.

It is thereupon ordered that said matter be referred to Hubert F. Laugharn, Esq., one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said A. Moody & Co., Inc., a corporation, shall attend before said referee on Feb. 3, 1947 and at such times as said referee shall designate, at his office in Los Angeles, California, and shall submit to such orders as may be made by said referee or by this Court relating to said matter.

Witness, the Honorable Wm. C. Mathes, Judge of said Court, and the seal thereof, at Los Angeles, in said District, on Jan. 27, 1947.

(Seal)

EDMUND L. SMITH

Clerk

By F. Betz

Deputy Clerk

[Endorsed]: Filed Jan. 27, 1947. Edmund L. Smith,
Clerk. [12]

[Title of District Court and Cause]

ORDER OF ADJUDICATION

A meeting of the creditors of said debtor corporation having been regularly called, and notice thereof having been given in the manner provided by law, and said meeting having been continued from time to time until the 18th day of March, 1947, at 2:00 o'clock P. M. before the undersigned Referee, Cobb & Utley appearing as attorneys for debtor corporation, Craig & Weller and George R. Larwell appearing as attorneys for Creditors' Committee, and Russell B. Seymour and Frank C. Weller appearing for the receiver herein, and certain creditors being represented in person, and it appearing that the said debtor had failed to file a fair, equitable and feasible plan of arrangement, and it also appearing from the statement in open court of attorney Ernest R. Utley for said debtor that the said debtor had no objection to an adjudication of bankruptcy herein, and it also appearing from statement of counsel for the Creditors' Committee that said Committee recommended an adjudication of said debtor corporation, and no creditor in court in [13] person or by counsel having objected to said adjudication, and it appearing to the court that it is for the best interests of the creditors that an order of adjudication be made herein.

Now. Therefore, It Is Ordered that the said debtor corporation be, and it hereby is, adjudicated a bankrupt, and it is directed that bankruptcy be proceeded with pursuant to the provisions of the Bankruptcy Act.

Dated: This 21 day of March, 1947.

HUBERT F. LAUGHARN
Referee in Bankruptcy

[Endorsed]: Filed Mar. 24, 1947. Edmund L. Smith,
Clerk. [14]

[Title of District Court and Cause]

ORDER AUTHORIZING DEBTOR TO REMAIN IN POSSESSION

Upon reading and filing the petition of the debtor corporation for relief under Chapter XI and it appearing to the best interest of all parties in interest, that the debtor be permitted to remain in possession of the assets and effects of the above named debtor, and that the business being operated be carried on in the ordinary course until further order of this Court, on motion of Francis B. Cobb, one of the attorneys for the above named debtor, and good cause appearing.

It Is Hereby Ordered that said debtor corporation be and it is hereby authorized to remain in possession of its assets and effects and to carry on the debtor's business in the ordinary course until further order of this Court, but under the supervision and control of this Court.

It Is Further Ordered that the debtor corporation file twice each month a report of the debtor's operations, which report shall contain a summary of all cash received, of all cash disbursed and of all obligations incurred, the amount of sales on credit, the amount of any accounts discounted, the amount of any accounts receivable collected, and profit made or loss sustained. [15]

It Is Further Ordered that the bankrupt shall keep separate books and records of its operations commencing on January 29, 1947, and continue until further order of the Court.

It Is Further Ordered that the bankrupt immediately sign up for gas, water, electricity and telephone and make the required deposit with said utility companies and have readings made in respect to meters in order that

the obligations existing to said companies at that time be separate and apart from obligations to arise in the future.

It Is Further Ordered that the debtor in possession open three bank accounts with the California Bank, 5979 South Broadway, Los Angeles, California, and that the first account shall be known as "A. Moody & Co., Inc., Debtor," and to which account there shall be deposited all income derived by the debtor in possession. Disbursement shall be made from said account

Joseph Moody

by checks signed by C. W. Jacobson and countersigned by Hubert F. Laugharn, Referee in Bankruptcy, or any other Referee in Bankruptcy of this Court. The company shall open an account to be known as the "Payroll Account"

Joseph Moody

on which checks shall be signed by C. W. Jacobson; that the debtor shall transfer from the debtor account sufficient funds to meet payroll checks, and the transfer shall be by check and countersigned by the undersigned Referee, or any other Referee of this Court, and accompanying said transfer check shall be presented a complete payroll showing the employees, the amount to be paid to each, and the deductions made for withholding tax, social security and unemployment insurance. The company shall open a third account which shall be known as the "Tax Account." Accompanying each check transferring to the payroll account funds to meet the payroll, there shall be drawn a check on the debtor's account for an amount covering all social security, unemployment insurance and withholding taxes, including the contribution by the debtor corporation, and said check so drawn on the debtor's account shall be deposited in the tax

account, and said tax account [16] shall be used only for the purpose of paying to the proper taxing agencies taxes required to be paid by the debtor corporation. The checks drawn upon said tax account shall be countersigned by the undersigned or any other Referee in Bankruptcy.

It Is Further Ordered that the debtor prepare and file the quarterly tax returns as required by law, and that any funds now held under a trust account to pay taxes shall be transferred to said tax account above provided to be made.

It Is Further Ordered, that until further order of this Court the debtor corporation be authorized and permitted to pay to Joe Moody the sum of Two Hundred Dollars (\$200.00) per week, to C. W. Jacobson the sum of One Hundred Dollars (\$100.00) per week, to M. Malcolm Jones the sum of One Hundred Dollars (\$100.00) per week, and to Robert Moody the sum of One Hundred Dollars (\$100.00) per week, as compensation for their services.

The Court reserves the right to make such other and further orders as may appear proper in the premises.

Dated this 27th day of January, 1947.

HUBERT F. LAUGHARN

Referee in Bankruptcy

[Endorsed]: Filed Aug. 3, 1948. Edmund L. Smith,
Clerk. [17]

[Title of District Court and Cause]

ORDER ON PETITION OF THALCO, A CREDITOR, FOR ORDER VACATING ORDER ALLOWING DEBTOR TO REMAIN IN POSSESSION AND FOR RECEIVER

The petition of Thalco, a corporation, an unsecured creditor herein, having been filed and coming on for hearing on February 11, 1947, before the Honorable Hubert F. Laugharn, Referee herein, after notice thereof given to the Debtor, A. Moody & Co., Inc., and the petitioner appearing by its attorney, George R. Larwill, and the Debtor appearing by its attorneys, Murchison, Myers & Gray and Cobb & Utley, by Francis B. Cobb, and other creditors having appeared, to-wit, Standard Automatic Sprinkler Co., by its attorney, Everett Shilling, Hill Electric Co., by its attorneys, Robert McWilliams and Granger and Hunt, by Adele O. Carver, and other creditors, to-wit, Modern Springs, Coast Coil Spring Co., Greeno Company, Lester E. Nielson and De Lamar Bed Springs Co., being present by some representative thereof, the Referee having considered said petition and [18] having heard statements of counsel and the creditors so represented having had an informal meeting and having appointed a committee of five for the purpose of meeting with the Debtor, investigating the conditions of Debtor's business and making recommendations to the Referee on the question of the advisability of the appointment of a Receiver herein and such other matters as may presently be pertinent to the said application and to the matter of continuing the business of the Debtor and the matter of continuing the Debtor in possession, and good cause appearing therefor,

It Is Hereby Ordered that the committee appointed by the said creditors, as aforesaid, shall be, and is hereby, appointed, temporarily until the further order of the Referee, an informal creditors' committee to meet, examine into, consider and make recommendations upon the condition of the business of the Debtor, the matters and things set forth in the Debtor's petition on file herein, the question of the advisability of continuing the Debtor in possession and the question of the advisability of the appointment of a Receiver herein and other matters pertinent, relevant and material to the foregoing, the said committee to be advisory to this Referee and to make its recommendations to this Referee as soon as may be practicable;

It Is Further Ordered that said committee shall consist of M. W. Engleman, representing the creditors generally, T. E. Thal, representing Thalco, a corporation, J. Hayden Chapman, representing Coast Coil Springs Co., Rollie Pierce, representing Greeno Company, and Lester C. Nielson, representing Lester C. Nielson Co., with the right to those of the said creditors so designated to substitute other officers or representatives of said creditors;

It Is Further Ordered that the Debtor, A. Moody & Co., Inc., shall furnish to said committee all information pertaining to the matters and things set forth in its petition in bankruptcy on file herein and the information therein contained, all information relating to the present business of the Debtor, its methods of conducting the business, [19] its contracts and commitments, its liabilities, fixed and contingent, and its assets.

It Is Further Ordered that this matter is continued for further hearing to 2:00 o'clock P. M., Friday, February 14, 1947.

Dated this 12th day of February, 1947.

HUBERT F. LAUGHARN
Referee in Bankruptcy [20]

Received copy of the within Order etc., this 12th day of February, 1947. Cobb & Utley, by F. J., Attorneys for Debtor.

[Endorsed]: Filed Aug. 3, 1948. Edmund L. Smith,
Clerk. [21]

[Title of District Court and Cause]

ORDER APPOINTING RECEIVER

Thalco, a corporation, and an unsecured creditor herein, having filed its petition for an order vacating order allowing debtor to remain in possession and for order appointing Receiver, and said matter having duly come on for hearing on the 10 day of February, 1947, said Thalco appearing by George R. Larwill, and the debtor appearing by its attorneys, Murchison, Myers & Gray and Cobb and Utley, by Francis B. Cobb, and said matter being continued from time to time to March 13, 1947, at which time there appeared said petitioner, by its counsel, and the debtor, by it counsel, and the Creditors' Committee theretofore appointed by the Court appearing in person and by its counsel, George R. Larwill and Frank C. Weller, and evidence having been adduced, and said Creditors' Committee having recommended that the Re-

ceiver be appointed herein, and it appearing to the best interests of creditors of the estate that the prayer of said petition be granted;

Now, Therefore, It Is Ordered that said order allowing [22] debtor to remain in possession be, and hereby is, vacated and George T. Goggin be, and he hereby is, appointed Receiver of all property of whatsoever nature and wheresoever located, now owned by or in possession of said debtor, and all and any property wheresoever located and of whatsoever nature, being property of said debtor and in possession of any agent, servant, officer or representative of said debtor, with authority to take possession of, preserve, care for, inventory, insure, segregate and move all assets of said debtor until the appointment and qualification of a Trustee herein, and with the further authority to collect such accounts receivable as are due to said estate, and with further authority to conduct the business and sell the same as a going concern, if it can be done with benefit to said estate, and said Receiver is authorized to do all and any such acts and take all and any such proceedings as may enable him forthwith to obtain possession of all and any such property; and

It Is Further Ordered that the duties and compensation of said Receiver are hereby specifically extended beyond those of a mere custodian within the meaning of Section 48 of the Bankruptcy Act to embrace the conduct of the business and marshalling of assets, preparation of inventories, collection, sale and disposition of accounts and notes receivable, and conduct of the business of said debtor as hereinabove specifically authorized; and

It Is Further Ordered that all persons, firms and corporations including said debtor, and all attorneys, agents, officers and servants of said debtor herewith de-

liver to said Receiver all property of whatsoever nature and wheresoever located, including merchandise, accounts, notes and bills receivable, drafts, checks, moneys, securities and all other choses in action, account books, records, chattels, lands and buildings, life and fire and all other insurance policies in the possession of them or any of them, and owned by said debtor, and said debtor is ordered forthwith to deliver to said Receiver all and any such property now in the possession of said debtor; and [23]

It Is Further Ordered that all persons, firms and corporations, including all creditors of said debtor and representatives, agents, attorneys and servants of all such creditors, and all sheriffs, marshals, and other officers, and their deputies, representatives and servants are hereby enjoined and restrained from removing, transferring, disposing of or selling or attempting in any way to remove, transfer or dispose of, sell or in any way interfere with any property, assets or effects in possession of said debtor or owned by said debtor, and whether in possession of any officer, agents, attorneys or representatives of said debtor, or otherwise, and all said persons are further enjoined from executing or issuing or causing the execution or issuance of suing out of any Court of any writ, process, summons, attachment, replevin or in any other proceeding for the purpose of impounding or taking possession of or interference with any property owned by or in possession of said debtor or owned by said debtor, and whether in possession of any agents, servants or attorneys of said debtor, or otherwise; and

It Is Further Ordered that the said Receiver is directed and authorized, as provided under the Postal Laws and Regulations of the United States, to receive all mail matter addressed to the above named debtor; and

It Is Further Ordered that before entering upon his duties said Receiver shall furnish a bond conditioned for the faithful performance of his duties, with a good and sufficient surety or sureties, in the sum of \$25,000.00.

Done at Los Angeles, in the Southern District of California, this 14 day of March, 1947.

HUBERT F. LAUGHARN
Referee in Bankruptcy

[Endorsed]: Filed Mar. 14, 1947. Hubert F. Laugharn,
Referee.

[Endorsed]: Filed Apr. 13, 1948. Edmund L. Smith,
Clerk. [24]

[Title of District Court and Cause]

ORDER APPROVING NOMINATION OF TRUSTEE UNDER PROVISIONS OF SEC. 338, CHAPTER XI IN THE EVENT OF LIQUIDATION

At Los Angeles, in said district on the 24th day of February, 1947.

George T. Goggin of Los Angeles, having been nominated by Creditors, as trustee of the estate of the above named debtor in the event it becomes necessary to administer the estate in Bankruptcy,

It Is Ordered that the nomination of said George T. Goggin, as trustee, be, and it hereby is approved, in case an Order of Adjudication in Bankruptcy is made herein.

and / it shall become necessary to administer the estate in Bankruptcy, he shall thereupon, without further order, be appointed trustee herein, and the amount of his bond upon his appointment, is fixed at

Dollars; provided that if at any time the value of the property of the said estate, in the possession of or under the control of the said trustee, shall exceed the amount of the said bond, the said trustee shall forthwith file a petition herein setting forth the facts and praying for an order directing him to file an additional bond in such amount as may be proper.

It Is Further Ordered that all claims filed at or before the first meeting of creditors in this matter be and they are hereby allowed, for voting purposes only, unless otherwise noted on said claims.

HUBERT F. LAUGHARN
Referee in Bankruptcy

[Endorsed]: Filed Aug. 3, 1948. Edmund L. Smith,
Clerk. [25]

Receiver or Trustee Bond No. S-425423
in Bankruptcy Premium: \$100.00 per annum

[Crest]

ASSOCIATED INDEMNITY CORPORATION
Head Office
332 Pine Street, San Francisco

In the District Court of the United States for the
Southern District of California
Central Division

In the Matter of A. MOODY & CO., INC., a corporation,
Bankrupt.

BOND OF TRUSTEE

Know All Men By These Presents, That we, George T. Goggin, of Los Angeles, California, as Principal, and Associated Indemnity Corporation, a corporation organ-

ized and existing under the laws of the State of California and having its principal office in the City and County of San Francisco, State of California, as surety, are held and firmly bound unto the United States of America, in the sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00), in lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Signed and Sealed, this 18th day of March, A. D. 1947.

The Condition of this obligation is such, that whereas the above named George T. Goggin was on the 18th day of March, A. D. 1947, appointed Trustee in the case pending in bankruptcy in the said Court, wherein A. Moody & Co., Inc., a corporation is the Bankrupt, and he, the said George T. Goggin has accepted said trust with all the duties and obligations pertaining thereto:

Now, Therefore, if the said George T. Goggin as aforesaid, shall obey such orders as said Court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets and effects of the estate of the said Bankrupt which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as said Trustee, then this obligation to be void; otherwise to remain in full force and virtue.

GEORGE T. GOGGIN [Seal]
ASSOCIATED INDEMNITY CORPORATION
By H. S. Vreeland [Seal]
Attorney-in-Fact

Signed and sealed in the presence of

State of California
County of Los Angeles—ss.

On this 18th day of March in the year one thousand nine hundred and forty-seven before me, H. W. Smith, a Notary Public in and for said County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared H. S. Vreeland, known to me to be the Attorney in Fact of the Associated Indemnity Corporation, the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument on behalf of the said corporation, and he duly acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office, in the said County of Los Angeles, the day and year in this certificate first above written.

[Seal]

H. W. SMITH

Notary Public in and for the County of Los Angeles,
State of California

My Commission Expires Sept. 22, 1947.

Examined and Recommended for Approval
as provided in Rule 28.

Approved the 20 day of March, A. D. 1947.

HUBERT F. LAUGHARN
Referee in Bankruptcy

[Endorsed]: Filed Mar. 20, 1947. Hubert F. Laugharn,
Referee.

[Endorsed]: Filed Mar. 24, 1947. Edmund L. Smith,
Clerk. [26]

[Title of District Court and Cause]

[CLAIM OF H. L. BYRAM]

At the City of Los Angeles, County of Los Angeles, State of California, on the 28th day of May, 1947, came H. L. Byram, and made oath and says:

That he is the duly appointed, qualified and acting Tax Collector of the County of Los Angeles, State of California, a body corporate and politic;

That the said A. Moody & Co., Inc., who has filed a petition for adjudication in bankruptcy, was at twelve o'clock noon of the first Monday in March, 1947, the owner of the following described personal property, of the assessed value set forth, to wit:

Assessment No. 36556—	Money	\$ 220.00
Goggin, George T., Trustee for	Merchandise	126,950.00
A. Moody & Co., Inc.,	Equipment	34,040.00
354 S. Spring St. Rm. 817		
Los Angeles 13, Calif.	Tax	\$ 9,979.86

That thereafter pursuant to law, a tax in the sum of \$9,979.86 was duly levied against said property for the year 1947.

That said tax is now due and unpaid, and petitioner, on behalf of the County of Los Angeles, respectfully petitions this Court for its order directing the payment of said tax as a preferred claim.

H. L. BYRAM
Tax Collector for the County of Los Angeles
By Geo. A. Shepard
Deputy H.F.L.

Subscribed and sworn to before me this 28th day of May, 1947.

(Seal)

J. F. MORONEY
County Clerk

By F. B. Murphy
Deputy [27]

[Endorsed]: Filed May 31, 1947. Hubert F. Laugharn,
Referee.

[Endorsed]: Filed Apr. 13, 1948. Edmund L. Smith,
Clerk. [28]

[Title of District Court and Cause]

ORDER AUTHORIZING TRUSTEE TO ABANDON
BURDENsome ASSETS

The trustee herein, George T. Goggin, having filed his petition for order authorizing him to abandon certain assets hereinafter described and said petition having duly come on for hearing after notice to creditors and all other persons as provided for by law, said trustee appearing by his attorneys, Frank C. Weller and Russell B. Seymour, and no appearance having been made by other persons, and evidence having been adduced and it appearing to the court and the court so finds, that the date of bankruptcy herein is January 7th, 1947; that prior to the date of bankruptcy the bankrupt had placed certain personal property, to-wit: certain materials and supplies inventoried at approximately \$189,046.03, in the public warehouse of Haslett Warehouse Co. on the premises known as 5300 South San Pedro St., Los Angeles, California, and had received warehouse receipts for said goods and had pledged said ware-

house receipts with the Bank of America National Trust and Savings Association to secure [29] a certain indebtedness owing to said bank which certain indebtedness at the date of bankruptcy amounted to approximately \$117,716.06; that said indebtedness was and is more than could, at the date of bankruptcy or at any time since, be obtained by the trustee for said personal property or said warehouse receipts; that said personal property and warehouse receipts at all times have been, and are now, a burdensome asset of the estate in that there has never been any equity therein which could be realized by the estate or the trustee and there are heavy charges which have been and are accruing in connection therewith, including, among other things, asserted personal property taxes and warehouse charges; that neither said personal property nor said warehouse receipts, nor any of them, have been taken over by the estate herein or the said trustee and therefore the court concludes and further finds that certain personal property and warehouse receipts are a burdensome asset and

It Is Further Ordered, Adjudged and Decreed that said personal property and warehouse receipts are a burdensome asset of this estate and the said trustee is directed not to take over said assets or any of them.

Dated this 20 day of August, 1947.

HUBERT F. LAUGHARN
Referee in Bankruptcy

[Endorsed]: Filed Aug. 20, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Apr. 13, 1948. Edmund L. Smith, Clerk. [30]

[Title of District Court and Cause]

OBJECTIONS TO CLAIM OF H. L. BYRAM,
COUNTY TAX COLLECTOR, AND NOTICE
OF HEARING

Comes now George T. Goggin, trustee herein, and objects to the allowance of the claim of H. L. Byram, Tax Collector of the County of Los Angeles, State of California, on the following grounds, to-wit: (1) That neither the bankrupt nor the estate herein nor any officer of this court was either the owner of, or in possession of, any of the merchandise assessed in the sum of \$126,950.00 on the first Monday in March, 1947; (2) that an order directing the trustee to abandon any interest of the estate in said merchandise has been duly and regularly made herein; and (3) that the amounts of the assessments of said merchandise and of equipment in the sum of \$34,-040.00 and each of them are excessive.

Notice Is Given that a hearing of the foregoing objections will be had before the referee herein, at 343 Federal Building, Temple and Spring Streets, Los Angeles, California, on the 2nd day of September, 1947, at the hour of 2 P. M., of said day.

FRANK C. WELLER and
RUSSELL B. SEYMOUR
Attorneys for the Trustee

[Endorsed]: Filed Aug. 26, 1947. Hubert F. Laugharn, Referee.

[Endorsed: Filed Apr. 13, 1948. Edmund L. Smith, Clerk. [31]

[Title of District Court and Cause]

ORDER, FINDINGS OF FACT, AND CONCLUSIONS OF LAW RE CLAIM OF TAX COLLECTOR

The trustee herein, George T. Goggin, having filed objections to the allowance of the tax claim filed herein by H. L. Byram, Tax Collector of the County of Los Angeles, State of California, in the principal amount of \$9,979.86, and said objections having duly come on for hearing before this Court on September 2, 1947, and thereafter, Russell B. Seymour and Frank C. Weller, by Russell B. Seymour, appearing for said trustee and Harold W. Kennedy, County Counsel, by Andrew O. Porter, Deputy County Counsel, appearing for said H. L. Byram, and evidence having been presented to the court and argument having been made by counsel, and the matter submitted to the court for its findings of fact, conclusions of law, and orders, now, therefore,

The Court Makes Its Findings of Fact as Follows:

1. That A. Moody & Co., Inc., a corporation, filed its petition for arrangement under the provisions of Chapter XI of the Bankruptcy Act, Section 322, on January 27, 1947; that on the [32] 21st day of March, 1947, and order of adjudication was made under the provisions of Section 376(2) of Chapter XI of the Bankruptcy Act and pursuant to Section 378(2) of said act the proceeding was thereafter conducted in like manner and effect "as if a voluntary petition for adjudication in bankruptcy had been entered on the day when the petition under this chapter was filed"; and said George T. Goggin became the duly appointed, qualified, and acting trustee of the estate of said A. Moody & Co., Inc., bankrupt herein, and

at all times since has been, and now is, the duly appointed, qualified, and acting trustee of the estate of said bankrupt.

2. For several months prior to the filing of the petition of the debtor, the debtor had been engaged in the business of manufacturing mattresses at 5300 South San Pedro Street, Los Angeles, California, and was so engaged at the time of the filing of the petition and continued to be so engaged at said address, pursuant to order of the court, until the time of the appointment of the receiver, who continued such operation until on or about March 18, 1947.

3. Thereafter H. L. Byram, County Tax Collector for Los Angeles County, asserted a tax claim as an expense of administration against the trustee herein in the amount of \$9,979.86. A portion thereof was based upon an assessment of \$126,950.00, of which \$88,118 of that amount represented materials which never came into the possession of the trustee of the bankrupt estate, the same at all times being in the exclusive control of Haslett Warehouse Company upon premises leased by it and against which property there were issued, outstanding warehouse receipts. There was not at bankruptcy or at any later time any interest or asset of value in the property in the possession of the Haslett Warehouse Company and the trustee was not permitted to take over, or to assume, the same as an asset, excepting only that \$992.82 thereof, at assessed valuation, was released to the trustee after the tax date upon pay- [33] ment by him to the pledgee of the warehouse receipts of the reasonable value of such goods so released. Subsequently in the administration of the bankrupt estate, the trustee was directed by proper order of this court to abandon, and did abandon the balance of the warehoused property.

4. On April 4, 1947, Ralph Owen, chief accountant for the bankrupt herein, made, verified, and filed with the Assessor on behalf of the trustee of said bankrupt, the statement required by Section 8 of Article XIII of the Constitution of California and by Section 441 of the Revenue & Taxation Code of California, showing as one item thereof "Mdse. at 5300 S. San Pedro St. value \$126,950. Cotton-Ticking-Mattresses-etc." but the said statement was made without the sanction, approval, or direction of the referee in bankruptcy.

5. The trustee prior to the hearing of these objections and pursuant to the order of the court sold all, or substantially all, of the remaining property included in said assessment for an amount greater than the amount of the total claim filed herein by said Tax Collector.

And the Court Makes Its Conclusions of Law as Follows:

1. That the claim for personal property taxes upon that personal property which the trustee took over as an asset herein (including the item of \$992.82 above indicated) is not a tax claim provable under Section 63 of the Bankruptcy Act but is a proper charge of administration and the same is allowed and the trustee ordered to pay the same in full, to-wit, in the sum of \$4,589.96.

2. That the tax in the amount of \$5,389.90 upon the personal property which never came into the possession of the trustee and which the trustee was ordered to release for the reason that the same was not an asset, should be disallowed as a charge against the trustee as an alleged expense of administration herein. [34]

3. It is the Referee's conclusion that the treatment of the said claim in the manner indicated does not come within the rule of law indicated by Glass v. Phillips, 139 Fed. (2) 1016; In re Ingersoll Co., 148 Fed. (2) 282; or Allied Enterprise, Inc., No. 44,758 of this Court.

The Court Makes Its Order as Follows:

It Is Ordered that the said claim be and hereby is reduced to the sum of \$4,589.96 and is allowed in that amount and the trustee is ordered to pay the said allowed amount in full.

Dated this 2 day of February, 1948.

HUBERT F. LAUGHARN
Referee in Bankruptcy

[Endorsed]: Filed Feb. 2, 1948. Hubert F. Laugharn,
Referee.

[Endorsed]: Filed Apr. 13, 1948. Edmund L. Smith,
Clerk. [35]

[Minutes: Tuesday, February 10, 1948]

Present: The Honorable Paul J. McCormick, District
Judge.

It is ordered that all cases pending before Hubert F.
Laugharn, Referee resigned, be transferred and re-re-
ferred to David B. Head, as Referee in Bankruptcy. [36]

4. On April 4, 1947, Ralph Owen, chief accountant for the bankrupt herein, made, verified, and filed with the Assessor on behalf of the trustee of said bankrupt, the statement required by Section 8 of Article XIII of the Constitution of California and by Section 441 of the Revenue & Taxation Code of California, showing as one item thereof "Mdse. at 5300 S. San Pedro St. value \$126,950. Cotton-Ticking-Mattresses-etc." but the said statement was made without the sanction, approval, or direction of the referee in bankruptcy.

5. The trustee prior to the hearing of these objections and pursuant to the order of the court sold all, or substantially all, of the remaining property included in said assessment for an amount greater than the amount of the total claim filed herein by said Tax Collector.

And the Court Makes Its Conclusions of Law as Follows:

1. That the claim for personal property taxes upon that personal property which the trustee took over as an asset herein (including the item of \$992.82 above indicated) is not a tax claim provable under Section 63 of the Bankruptcy Act but is a proper charge of administration and the same is allowed and the trustee ordered to pay the same in full, to-wit, in the sum of \$4,589.96.

2. That the tax in the amount of \$5,389.90 upon the personal property which never came into the possession of the trustee and which the trustee was ordered to release for the reason that the same was not an asset, should be disallowed as a charge against the trustee as an alleged expense of administration herein. [34]

3. It is the Referee's conclusion that the treatment of the said claim in the manner indicated does not come within the rule of law indicated by Glass v. Phillips, 139 Fed. (2) 1016; In re Ingersoll Co., 148 Fed. (2) 282; or Allied Enterprise, Inc., No. 44,758 of this Court.

The Court Makes Its Order as Follows:

It Is Ordered that the said claim be and hereby is reduced to the sum of \$4,589.96 and is allowed in that amount and the trustee is ordered to pay the said allowed amount in full.

Dated this 2 day of February, 1948.

HUBERT F. LAUGHARN
Referee in Bankruptcy

[Endorsed]: Filed Feb. 2, 1948. Hubert F. Laugharn,
Referee.

[Endorsed]: Filed Apr. 13, 1948. Edmund L. Smith,
Clerk. [35]

[Minutes: Tuesday, February 10, 1948]

Present: The Honorable Paul J. McCormick, District
Judge.

It is ordered that all cases pending before Hubert F.
Laugharn, Referee resigned, be transferred and re-re-
ferred to David B. Head, as Referee in Bankruptcy. [36]

[Title of District Court and Cause]

AFFIDAVIT FOR AND ORDER EXTENDING
TIME WITHIN WHICH TO FILE PETITION
FOR REVIEW

State of California
County of Los Angeles—ss.

Andrew O. Porter, being first duly sworn, on oath deposes and says:

That he is one of the attorneys for the respondent herein, H. L. Byram, Tax Collector of the County of Los Angeles;

That said respondent feels aggrieved by the order entered herein by the Referee herein, Hubert F. Laugharn, on the 2nd day of February, 1948, and desires to file a petition for review to the United States District Court of said Order made by said Referee on the 2nd day of February, 1948.

Affiant further states that both he and his associates have had no opportunity to prepare said petition for review due to the pressure of other litigation and other work, and prays [37] that an order be made herein by this Court extending the time within which respondent herein may file his petition for review up to and including the 2nd day of March, 1948.

ANDREW O. PORTER

Subscribed and sworn to before me this 11th day of February, 1948.

EARL LIPPOLD

County Clerk

By Marie E. McPherson

Deputy County Clerk

ORDER

Good cause appearing therefor,

It Is Hereby Ordered that the respondent herein, H. L. Byram, Tax Collector of the County of Los Angeles, shall be and is hereby granted up to and including the 2nd day of March, 1948, within which to file his petition for review of the order made by this Court on the 2nd day of February, 1948, to the United States District Court of this District in the above entitled proceeding.

Dated: February 11, 1948.

DAVID B. HEAD
Referee in Bankruptcy

[Endorsed]: Filed Feb. 11, 1948. David B. Head,
Referee.

[Endorsed]: Filed Apr. 13, 1948. Edmund L. Smith,
Clerk. [38]

[Title of District Court and Cause]

PETITION FOR REVIEW OF REFEREE'S ORDER
BY JUDGE

To David B. Head, Esq., Referee in Bankruptcy:

George T. Goggin, trustee for the bankrupt herein, having filed objections to the claim of H. L. Byram, Tax Collector of Los Angeles County, for \$9,979.86; and said objections having duly come on for hearing on September 2, 1947, Russell B. Seymour and Frank C. Weller, by Russell B. Seymour, appearing for said trustee, and Harold W. Kennedy, County Counsel, by Andrew O. Porter, Deputy County Counsel, appearing for H. L.

Byram, County Tax Collector; and evidence having been presented to the court and argument having been made by counsel, and the matter submitted to the Court for its Findings of Fact, Conclusions of Law, and Order,—the Court made the following Findings of Fact, Conclusions of Law, and order, in words and figures as follows:

“The Court Makes Its Findings of Fact as Follows:

1. That A. Moody & Co., Inc., a corporation, filed its petition for arrangement under the provisions of Chapter XI [39] of the Bankruptcy Act, Section 322, on January 27, 1947; that on the 21st day of March, 1947, and order of adjudication was made under the provisions of Section 376(2) of Chapter XI of the Bankruptcy Act and pursuant to Section 378(2) of said act the proceeding was thereafter conducted in like manner and effect ‘as if a voluntary petition for adjudication in bankruptcy had been entered on the day when the petition under this chapter was filed’; and said George T. Goggin became the duly appointed, qualified, and acting trustee of the estate of said A. Moody & Co., Inc., bankrupt herein, and at all times since has been, and now, is the duly appointed, qualified, and acting trustee of the estate of said bankrupt.

2. For several months prior to the filing of the petition of the debtor, the debtor had been engaged in the business of manufacturing mattresses at 5300 South San Pedro Street, Los Angeles, California, and was so engaged at the time of the filing of the petition and continued to be so engaged at said address, pursuant to order of the court, until the time of the

appointment of the receiver, who continued such operation until on or about March 18, 1947.

3. Thereafter H. L. Byram, County Tax Collector for Los Angeles County, asserted a tax claim as an expense of administration against the trustee herein in the amount of \$9,979.86. A portion thereof was based upon an assessment of \$126,950.00, of which \$88,118 of that amount represented materials which never came into the possession of the trustee of the bankrupt estate, the same at all times being in the exclusive control of Haslett Warehouse Company upon premises leased by it and against which property there were issued, outstanding warehouse receipts. There was not at bankruptcy or at any later time any interest or asset of value in the [40] property in the possession of the Haslett Warehouse Company and the trustee was not permitted to take over, or to assume, the same as an asset, excepting only that \$992.82 thereof, at assessed valuation, was released to the trustee after the tax date upon payment by him to the pledgee of the warehouse receipts of the reasonable value of such goods so released. Subsequently in the administration of the bankrupt estate, the trustee was directed by proper order of this court to abandon, and did abandon the balance of the warehoused property.

4. On April 4, 1947, Ralph Owen, chief accountant for the bankrupt herein, made, verified, and filed with the Assessor on behalf of the trustee of said bankrupt, the statement required by Section 8 of Article XIII of the Constitution of California and by Section 441 of the Revenue & Taxation Code of California, showing as one item thereof 'Mdse. at 5300

Byram, County Tax Collector; and evidence having been presented to the court and argument having been made by counsel, and the matter submitted to the Court for its Findings of Fact, Conclusions of Law, and Order,—the Court made the following Findings of Fact, Conclusions of Law, and order, in words and figures as follows:

“The Court Makes Its Findings of Fact as Follows:

1. That A. Moody & Co., Inc., a corporation, filed its petition for arrangement under the provisions of Chapter XI [39] of the Bankruptcy Act, Section 322, on January 27, 1947; that on the 21st day of March, 1947, and order of adjudication was made under the provisions of Section 376(2) of Chapter XI of the Bankruptcy Act and pursuant to Section 378(2) of said act the proceeding was thereafter conducted in like manner and effect ‘as if a voluntary petition for adjudication in bankruptcy had been entered on the day when the petition under this chapter was filed’; and said George T. Goggin became the duly appointed, qualified, and acting trustee of the estate of said A. Moody & Co., Inc., bankrupt herein, and at all times since has been, and now, is the duly appointed, qualified, and acting trustee of the estate of said bankrupt.

2. For several months prior to the filing of the petition of the debtor, the debtor had been engaged in the business of manufacturing mattresses at 5300 South San Pedro Street, Los Angeles, California, and was so engaged at the time of the filing of the petition and continued to be so engaged at said address, pursuant to order of the court, until the time of the

appointment of the receiver, who continued such operation until on or about March 18, 1947.

3. Thereafter H. L. Byram, County Tax Collector for Los Angeles County, asserted a tax claim as an expense of administration against the trustee herein in the amount of \$9,979.86. A portion thereof was based upon an assessment of \$126,950.00, of which \$88,118 of that amount represented materials which never came into the possession of the trustee of the bankrupt estate, the same at all times being in the exclusive control of Haslett Warehouse Company upon premises leased by it and against which property there were issued, outstanding warehouse receipts. There was not at bankruptcy or at any later time any interest or asset of value in the [40] property in the possession of the Haslett Warehouse Company and the trustee was not permitted to take over, or to assume, the same as an asset, excepting only that \$992.82 thereof, at assessed valuation, was released to the trustee after the tax date upon payment by him to the pledgee of the warehouse receipts of the reasonable value of such goods so released. Subsequently in the administration of the bankrupt estate, the trustee was directed by proper order of this court to abandon, and did abandon the balance of the warehoused property.

4. On April 4, 1947, Ralph Owen, chief accountant for the bankrupt herein, made, verified, and filed with the Assessor on behalf of the trustee of said bankrupt, the statement required by Section 8 of Article XIII of the Constitution of California and by Section 441 of the Revenue & Taxation Code of California, showing as one item thereof 'Mdse. at 5300

S. San Pedro St. value \$126,950. Cotton-Ticking-Mattresses-etc.' but the said statement was made without the sanction, approval, or direction of the referee in bankruptcy.

5. The trustee prior to the hearing of these objections and pursuant to the order of the court sold all, or substantially all, of the remaining property included in said assessment for an amount greater than the amount of the total claim filed herein by said Tax Collector.

And the Court Makes Its Conclusions of Law as Follows:

1. That the claim for personal property taxes upon that personal property which the trustee took over as an asset herein (including the item of \$992.82 above indicated) is not a tax claim provable under Section 63 of the Bankruptcy Act but is a proper charge of administration and the same is allowed and the trustee ordered to pay the same in full, to-wit, in the sum of \$4,589.96. [41]

2. That the tax in the amount of \$5,389.90 upon the personal property which never came into the possession of the trustee and which the trustee was ordered to release for the reason that the same was not an asset, should be disallowed as a charge against the trustee as an alleged expense of administration herein.

3. It is the Referee's conclusion that the treatment of the said claim in the manner indicated does not come within the rule of law indicated by *Glass v. Phillips*, 139 Fed. (2) 1016; *In re Inggersoll Co.*, 148 Fed. (2) 282; or *Allied Enterprise, Inc.*, No. 44,748 of this Court.

The Court Makes Its Order as Follows:

It Is Ordered that the said claim be and hereby is reduced to the sum of \$4,589.96 and is allowed in that amount and the trustee is ordered to pay the said allowed amount in full.

Dated this 2 day of February, 1948.

HUBERT F. LAUGHARN

Referee in Bankruptcy"

That said Findings of Fact, Conclusions, and Order are erroneous for the following reasons:

I.

The Court erred in refusing to make the following Findings agreed to by counsel for the trustee and counsel for the tax collector:

"3. Prior to the filing of the petition the said A. Moody & Co., Inc. had purchased certain merchandise and materials for use in the manufacture of mattresses and had placed said materials in a 'field warehouse' owned and operated by Haslett [42] Warehouse Co. who issued non-negotiable warehouse receipts in conformity with the provisions of the Warehouse Receipts Act of the State of California. Prior to the filing of the petition said warehouse receipts had been pledged by A. Moody & Co., Inc. to secure an indebtedness owing by it in the sum of about \$117,716.06 as of the date of bankruptcy and as of the tax date herein involved, to-wit, the first Monday in March, 1947, at 12 M. Said field warehouse was located at the same address, towit, at 5300 South San Pedro Street, Los Angeles, California."

"5. That the debtor had certain similar merchandise and materials in its factory on the tax date, to

wit, at noon on the first Monday in March, 1947. That the assessor lumped all of said merchandise and material, whether in the warehouse or in the factory, and assessed all of such merchandise and materials in one assessment at \$126,950. That had the merchandise and materials in said warehouse been assessed separately by the Assessor, the assessed value thereof would have been \$88,118. The tax based thereon would amount to \$5,454.50."

"6. On August 20, 1947, an order was made by the Court, after due notice to all creditors and other interested parties, directing and authorizing the abandonment by the trustee of any and all interest of the estate in and to said warehoused goods."

II.

That the Conclusions and Order are erroneous in disallowing a portion of the tax in the amount of \$5,389.90 for the reason that pursuant to the taxpayer's statement the Assessor assessed all of said merchandise in a single lot at the lump sum of \$126,950.00 and a portion of said merchandise included in said [43] assessment coming into the hands of the receiver herein was sold for an amount greater than the amount of the total claim filed herein by said Tax Collector. (Finding 5.)

III.

That the Findings and Order are erroneous in concluding that this case is not governed by the interpretation of Section 64(a) 4 of the Bankruptcy Act as announced in---

Glass v. Phillips (CCA 5), 139 F. (2) 1016, 54 A. B. R. N. S. 771]

In re Ingersoll Co. (CCA 10), 148 F. (2) 282, at 284, 57 A. B. R. N. S. 677;

In re Allied Enterprise, Inc., No. 44758-WM
(Opinion of Referee Laugharn).

IV.

The trustee having filed a property statement with the County Assessor as required by law, showing the ownership of a single lot of merchandise, is now estopped to deny the ownership of all of such merchandise, or to ask this court to divide the lot.

V.

That the Trustee in Bankruptcy had ample opportunity to follow the remedy given by state law, that is, to appear before the County Board of Equalization, a quasi-judicial body, but failed to do so, and is now estopped from questioning said assessment and tax, which have become final and have the force, finality, and effect of a judgment.

VI.

The liability for taxes can not be avoided by abandoning [44] property where a personal liability for the tax has accrued and *because* final under state law.

VII.

That a personal liability for taxes accruing while conducting a business under order of court cannot be avoided by subsequent abandonment of the property.

VIII.

That property taxes in California are determined as of the first Monday in March, and a subsequent abandonment of a portion of the property more than five months later, after the tax had become final under state law, is not effective to avoid liability for the tax.

IX.

That said Order is erroneous, exceeds the jurisdiction of the bankruptcy court in assuming the authority to

redetermine the assessed valuation of property for county tax purposes by arbitrarily dividing the assessed valuation between the property in the bankrupt's factory at 5300 South San Pedro Street, Los Angeles, and the property at the Haslett Warehouse Company at the same address; that by so doing the Court in effect is redetermining said assessment which was regularly made by the County Assessor, a quasi-judicial officer, in accordance with the Constitution and laws of the State of California, equalized by the County Board of Equalization, a quasi-judicial body, and has become final under state law and has the force, finality, and effect of a judgment.

Wherefore, petitioner prays for a review of said Findings, Conclusions, and Order by the Judge; that the Referee be directed to enter the Findings requested by petitioner [45] and to overrule the objections to petitioner's tax claim, and to enter an order for payment of said claim in full.

Dated: March 2, 1948.

H. L. BYRAM
Tax Collector of the County of Los Angeles
Petitioner

HAROLD W. KENNEDY

County Counsel, and

ANDREW O. PORTER

Deputy County Counsel

Attorneys for Petitioner [46]

[Verified.] [47]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Apr. 13, 1948. Edmund L. Smith,
Clerk. [48]

[Title of District Court and Cause]

REFEREE'S CERTIFICATE ON REVIEW

To the Honorable William Mathes, Judge of the District Court of the United States, Southern District of California:

I, David B. Head, one of the referees in bankruptcy of this court, before the above-entitled matter is pending, do hereby certify:

That on the 2nd day of February, 1948, an order was made by Hubert F. Laugharn my predecessor, and the then-acting referee in bankruptcy in charge of the within proceeding, disallowing in part the claim of H. L. Byram, Tax Collector of Los Angeles County, filed in the sum of \$9,979.86.

Within the time prescribed by law, said claimant filed his Petition for Review of said Order.

The undersigned referee hereby certifies to the Judge (1) the question presented, (2) a summary of the evidence relating thereto, and (3) the findings of the referee. [49]

I.

QUESTION PRESENTED

The question involved appears to be: Whether the bankruptcy court has the power and right, in fixing an expense of administration, to eliminate personal property taxes assessed by the County Assessor on pledged personal property which never came into possession of the bankrupt estate and in which no equity existed at the date of bankruptcy or thereafter, where in the course of administration other personal property, included in the same assessment, was sold for an amount greater than the total assessed taxes.

II.

STATEMENT OF EVIDENCE

The evidence, which was presented somewhat informally, in large part by statement of counsel and reference to orders earlier made herein, appears to have been as follows:

A. Moody & Co., Inc., the bankrupt herein, filed a petition for an arrangement under Section 322 of the Bankruptcy Act, on January 27, 1947, and on the same day an order was made herein "placing the debtor in possession" and permitting it to operate its business which was the manufacture and sale of mattresses, and in which business it had been engaged for several months prior to the date of bankruptcy, at 5300 South San Pedro Street, Los Angeles, California. At the date of bankruptcy, at the same address, a portion of the premises were under lease to Haslett Warehouse Company into whose exclusive custody and possession a large quantity of personal property of the bankrupt had already been placed by the bankrupt, and against which personal property warehouse receipts had been issued by Haslett Warehouse Company in conformity to the provisions of the Warehouse Receipts Act of the State of California. Prior to the date of bankruptcy said warehouse receipts had been pledged by the bankrupt to secure an [50] indebtedness owing by it in the sum of about \$117,716.06 as of the date of bankruptcy and as of the tax date herein involved, to-wit, the first Monday in March, 1947, at 12 M., being March 3, 1947. The bankrupt had other personal property in its factory at the date of bankruptcy and on the tax date, some of which was similar to the warehoused goods. The assessor assessed all personal property, whether in the ware house or in the factory, in one

amount, to-wit: \$126,950.00, the tax based thereon being \$9,979.86. If the pledged property had been assessed separately the assessed value thereof would have been \$88,118.00, and the tax based thereon would have been \$5454.50. The order permitting the debtor to remain in possession was vacated March 13, 1947, at which time George T. Goggin was appointed receiver with authority to operate the business. On March 18, 1947, an order of adjudication was made and said George T. Goggin became trustee in bankruptcy with authority to operate the business, as of March 20, 1947. On April 12, 1947, substantially all of the personal property of the estate (excepting the pledged property) was sold for about \$27,000.00. On June 20, 1947, the trustee filed his petition for authority to abandon said pledged property, which authority was thereafter granted, after due notice to all parties. At no time on or after the date of bankruptcy was there any interest or asset of value for the bankrupt estate in the pledged goods, and neither the debtor, nor the receiver, nor the trustee ever took any part of the pledged goods into his possession (excepting that after the tax date there was released to the trustee \$992.82 at assessed valuation of such goods upon payment by the trustee to the pledgee of the warehouse receipts, of the reasonable value of the goods so released), and nothing was ever realized by the estate from said pledged property. On April 4, 1947, Ralph Owen, chief accountant for the bankrupt, made, verified, and filed with the assessor on behalf of the trustee, the statement required by Section 8 of Article XIII of the Constitution of California and by Section 441 of the Revenue & Taxation [51] Code of California, showing as one item thereof "mdse. at 5300 S. San Pedro St. value \$126,950. Cotton-Ticking-Mattresses-etc." but

the said statement was made without the sanction, approval, or direction of the referee in bankruptcy.

III.

FINDINGS OF THE REFEREE

The findings of the referee are set forth in the order under review and therefore are not now repeated.

The undersigned referee transmits herewith the following:

1. Claim of H. L. Byram, Tax Collector of Los Angeles, for \$9,979.86.
2. Objections of the trustee to said claim.
3. Reporter's Transcript of the proceedings.
4. Order *date* February 2, 1948.
5. Petition for Review of Referee's Order by Judge, dated March 2, 1948.
6. Petition and Order Extending Time within which to file Petition for Review.
7. Exhibits: Declaration filed with Assessor (no number). Statement of trustee of pledged goods released after tax date (no number).
8. Order of Appointment of Receiver.
9. Order of Adjudication.
10. Order Confirming Sale, dated April 12, 1947.
11. Petition and Order of Abandonment.

Dated this 13 day of April, 1948.

DAVID B. HEAD

Referee in Bankruptcy.

[Endorsed]: Filed Apr. 13, 1948. Edmund L. Smith,
Clerk. [52]

[Title of District Court and Cause]

STIPULATION AND ORDER RE
SUPPLEMENTAL CERTIFICATE OF REFEREE

It Is Stipulated by the undersigned that an order may be made by this Honorable Court directing David B. Head, Referee in Bankruptcy, to file herein his Supplemental Certificate to Referee's Certificate on Review, dated April 13, 1948, whereby said referee shall transmit to this court the following:

1. Order Placing Debtor in Possession.
2. Order Vacating Order Placing Debtor in Possession.
3. Order Appointing Trustee.

RUSSELL B. SEYMOUR and
FRANK C. WELLER

By Russell B. Seymour

Attorneys for George T. Goggin, Trustee

HAROLD W. KENNEDY
County Counsel, and

ANDREW O. PORTER
Deputy County Counsel

By Andrew O. Porter

Attorneys for H. L. Byram, Tax Collector

It Is So Ordered this 29th day of July, 1948.

WM. C. MATHES

Judge of the District Court of the United States

[Endorsed]: Filed Jul. 29, 1948. Edmund L. Smith,
Clerk. [53]

[Title of District Court and Cause]

SUPPLEMENTAL CERTIFICATE OF REFEREE

To the Honorable William Mathes, Judge of the District Court of the United States, Southern District of California:

I, David B. Head, one of the referees in bankruptcy of this court, before whom the above-entitled matter is pending, do hereby transmit the following documents, to-wit:

1. Order Placing Debtor in Possession.
2. Order Vacating Order Placing Debtor in Possession.
3. Order Appointing Trustee,

and certify that each constituted a part of the record of the proceedings before me in the above entitled matter.

Dated this 29 day of July, 1948.

DAVID B. HEAD

Referee in Bankruptcy

[Endorsed]: Filed Aug. 3, 1948. Edmund L. Smith,
Clerk. [54]

In the District Court of the United States
Southern District of California
Central Division

In Bankruptcy No. 44,737-WM

In the Matter of A. MOODY & CO., INC., a corporation,
Bankrupt.

ORDER ON REVIEW OF REFEREE'S ORDER OF
FEBRUARY 2, 1948 DISALLOWING IN PART
THE CLAIM OF H. L. BYRAM, TAX COL-
LECTOR OF THE COUNTY OF LOS AN-
GELES, FOR PERSONAL PROPERTY TAXES

Upon the petition for review filed March 2, 1948 by H. L. Byram, Tax Collector for the County of Los Angeles, State of California and upon the certificate of Referee David B. Head filed April 13, 1948; and upon the proceedings had before the referee as appears from his certificate; and upon hearing counsel for the parties; and it appearing to the court upon review, from the record of the hearing had before the referee on September 2, 1947 and the referee's findings of fact dated February 2, 1948

(a) that in the year 1947, and subsequent to the date of filing of the original petition herein [Bankruptcy Act, §§ 322, 378(1); 11 U. S. C. §§ 722, 778] the tax assessor for the County of Los Angeles assessed against the bankrupt estate an ad valorem tax in the amount of \$9,979.86 on all the personal property of the bankrupt estate [55] situated within Los Angeles County as of noon on March 3, 1947, including certain personality stored by the bankrupt in

the Haslett Warehouse, Los Angeles, prior to the petition;

(b) that the aforementioned assessment was in all respects accurate and made in accordance with the laws of the State of California as of the tax day (March 3, 1947) [Constitution of California, Art. XIII; Cal. Rev. & Tax Code, §§ 401-871];

(c) that the referee's order of abandonment dated August 20, 1947—which directed the trustee in bankruptcy “not to take over” the aforementioned property stored in the Haslett Warehouse—did not affect the liability of the bankrupt estate under §§ 62a(1) and 64a(1) of the Bankruptcy Act [11 U. S. C. §§ 102a(1) and 104a(1)] for taxes legally assessed and accruing after bankruptcy [cf: *In re Humeston*, 83 F. (2d) 187 (C. C. A. 2d, 1936); *Robinson v. Dickey*, 36 F. (2d) 147 (C. C. A. 3rd, 1929), cert. den. 281 U. S. 750 (1930)];

(d) that the bankruptcy court, in approving a claim for taxes as an expense of administration, may review a tax assessment [see *Arkansas Corp. v. Commn. v. Thompson*, 313 U. S. 132 (1940) and *Gardner v. New Jersey*, 329 U. S. 565 (1947)]; but may not, under §§ 62a(1) and 64a(1) of the Bankruptcy Act [11 U. S. C. §§ 102a(1) and 104a (1)] reduce or disallow a claim for taxes legally assessed under the laws of the taxing sovereign, irrespective of whether or not the assessment has been approved by judicial decree or by act of a quasi-judicial officer or tribunal [cf: *Lyford v. City of New York*, 137 F. (2d) 782 [56] (C. C. A. 2d, 1943)]; and

(e) that accordingly the petitioner herein is entitled to full payment of the \$9,979.86 claim against the bankrupt estate for personal property taxes as an expense of administration [Bankruptcy Act, §§ 62a and 64a(1); 11 U. S. C. §§ 102a(1) and 104a(1); 3 Collier on Bankruptcy, pp. 1509-1519, 2077-2082];

It Is Ordered that the order of the referee, dated February 2, 1948, disallowing in part the claim of H. L. Byram, Tax Collector of the County of Los Angeles, be and said order is hereby vacated and set aside; and the matter is hereby recommitted to the referee with directions to enter an appropriate order allowing the claim in full as an expense of administration.

It Is Further Ordered that the Clerk this day forward copies of this order by United States mail to

- (1) Referee David B. Head;
- (2) The attorney for the petitioner; and
- (3) The attorneys for the trustee.

June 4, 1948.

WM. C. MATHES

United States District Judge

Judgment entered Jun. 4, 1948. Docketed Jun. 4, 1948. C. O. Book 51, page 121. Edmund L. Smith, Clerk by Louis J. Somers, Deputy.

[Endorsed]: Filed Jun. 4, 1948. Edmund L. Smith, Clerk. [57]

[Title of District Court and Cause]

NOTICE OF APPEAL TO CIRCUIT COURT OF
APPEALS, NINTH CIRCUIT

Notice Is Hereby Given that George T. Goggin, as trustee of the estate of A. Moody & Co., Inc., a corporation, Bankrupt, the respondent and trustee herein, hereby appeals to the Circuit Court of Appeals, for the Ninth Circuit, from the order of the Court herein, dated June 4, 1948, made and entered in this action, vacating and setting aside the order of the referee in bankruptcy herein dated February 2, 1948, which disallowed in part the claim of H. L. Byram, Tax Collector of the County of Los Angeles; and recommitting the matter to the referee with directions to enter an appropriate order allowing said claim in full as an expense of administration.

FRANK C. WELLER and
RUSSELL B. SEYMOUR

By Russell B. Seymour

Attorneys for George T. Goggin, as Trustee of the
Estate of A. Moody & Co., Inc, a Corporation,
Bankrupt

[Endorsed]: Filed & mld. copy to County Counsel Jul.
1, 1948. Edmund L. Smith, Clerk. [58]

[Title of District Court and Cause]

STATEMENT OF POINTS
(Rule 75(d))

STATEMENT OF POINTS

I.

That the District Court erred in failing to find (if it did make independent findings or failed to adopt the findings of the referee in bankruptcy) as follows:

"Thereafter (after March 18, 1947) H. L. Byram, County Tax Collector for Los Angeles County, asserted a tax claim as an expense of administration against the trustee herein in the amount of \$9,979.86. A portion thereof was based upon an assessment of \$126,950.00, of which \$88,118.00 of that amount represented materials which never came into the possession of the trustee of the bankrupt estate, the same at all times being in the exclusive control of Haslett Warehouse Company upon premises leased by it and against which property there were issued, [59] outstanding warehouse receipts. There was not at bankruptcy or at any later time any interest or asset of value in the property in the possession of the Haslett Warehouse Company and the trustee was not permitted to take over, or to assume, the same as an asset, excepting only that \$992.82 thereof, at assessed valuation, was released to the trustee after the tax date upon payment by him to the pledgee of the warehouse receipts of the reasonable value

of such goods so released. Subsequently in the administration of the bankrupt estate, the trustee was directed by proper order of this court to abandon, and did abandon the balance of the warehoused property.”

in that same is contrary to the evidence.

II.

That the District Court erred in its conclusion of law as follows:

“That the referee’s order of abandonment dated August 20, 1947—which directed the trustee in bankruptcy ‘not to take over’ the aforementioned property stored in the Haslett Warehouse—did not affect the liability of the bankrupt estate under Sections 62a(1) and 64a(1) of the Bankruptcy Act (11 U. S. C. 102(a) 1 and 104a(1)) for taxes legally assessed and accruing after bankruptcy.”

in that same is contrary to the law and not supported by the evidence.

III.

That the District Court erred in its conclusion of law that the bankruptcy court may not, under the foregoing sections reduce or disallow a claim for taxes legally assessed under the laws of the State of California when such tax or a portion thereof is based upon an assessment arising after the date of bankruptcy upon property which never came into the possession of the estate in bankruptcy

and from which nothing was realized by the estate [60] and which after the tax date was abandoned by the trustee upon order of the court, the estate at no time having any interest of value in such property. The foregoing conclusion of law is contrary to the law and is not supported by the evidence.

IV.

That the District Court erred in its conclusion of law that the claimant is entitled to full payment of the \$9,979.86 claim against the bankrupt estate for personal property taxes as an expense of administration, in that same is contrary to the law.

V.

That the District Court erred in its order vacating and setting aside the order of the referee in bankruptcy and directing that the matter herein be recommitted to the referee with directions to enter an appropriate order allowing the claim in full as an expense of administration, in that the said order is contrary to the law.

Dated this 20th day of July, 1948.

RUSSELL B. SEYMOUR and
FRANK C. WELLER

By Russell B. Seymour

Attorneys for Appellant [61]

Received copy of the within Statement of Points this 21st day of July, 1948. Harold W. Kennedy, County Counsel; by Andrew O. Porter, Deputy.

[Endorsed]: Filed Jul. 22, 1948. Edmund L. Smith,
Clerk. [62]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 65, inclusive, contain full, true and correct copies of Petition Under Chapter XI of the Bankruptcy Act; Approval of Debtor's Petition and Order of Reference Under Section 322 of the Bankruptcy Act; Order of Adjudication; Order Authorizing Debtor to Remain in Possession; Order on Petition of Thalco, a creditor, for Order Vacating Order Allowing Debtor to Remain in Possession and for Receiver; Order Appointing Receiver; Order Approving Nomination of Trustee Under Section 338, Chapter XI of the Bankruptcy Act in Event of Liquidation; Bond of Trustee and Order Approving; Claim of H. L. Byram, Tax Collector; Order Authorizing Trustee to Abandon Burdensome Assets; Objections to Claim of H. L. Byram, County Tax Collector; Order, Findings of Fact and Conclusions of Law re Claim of Tax Collector; Minute Order Entered February 10, 1948; Affidavit for and Order Extending Time Within Which to File Petition for Review; Petition for Review of Referee's Order by Judge; Referee's Certificate on Review; Stipulation and Order re Supplemental Certificate of Referee; Supplemental Certificate of Referee; Order on Review of Referee's Order of February 2, 1948 Disallowing in Part the Claim of H. L. Byram, Tax Collector of the County of Los Angeles, for Personal Prop-

erty Taxes; Notice of Appeal Statement of Points on Appeal and Designation of Record on Appeal, which constitute the Record on Appeal of Geo. T. Goggin, Trustee, to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$16.25 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 9 day of August, A. D. 1948.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy

[Endorsed]: No. 12020. United States Circuit Court of Appeals for the Ninth Circuit. George T. Goggin, as Trustee of the Estate of A. Moody & Co., Inc., Bankrupt, Appellant, vs. H. L. Byram, Tax Collector for the County of Los Angeles, State of California, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed August 12, 1948.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit

United States Circuit Court of Appeals
for the Ninth Circuit

No. 12020

GEORGE T. GOGGIN, as Trustee, etc.,

Appellant,

vs.

H. L. BYRAM, etc.,

Appellee.

APPELLANT'S STATEMENT OF POINTS ON
APPEAL

Comes now the appellant herein and adopts as his points on appeal the statement of points appearing in the transcript of the record.

RUSSELL B. SEYMOUR and
FRANK C. WELLER

By Russell B. Seymour

Attorneys for Appellant

Service of copy of foregoing "Appellant's Statement of Points on Appeal" is acknowledged this 16th day of August, 1948. Harold W. Kennedy, County Counsel, and A. O. Porter, Deputy, RAF, Attorneys for Appellee.

[Endorsed]: Filed Aug. 17, 1948. Paul P. O'Brien,
Clerk.